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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,012	09/01/2000	Karen A. Kreutz	8241	5529

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/653,012

Applicant(s)

KREUTZ ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 – 5, are rejected under 35 U.S.C. 102(e) as anticipated by Moder et al. (US 5,986,165).

With reference to claim 1, Moder et al. (hereinafter "Moder") discloses a feminine hygiene kit comprising an absorbent tampon (14), said tampon comprising an absorbent core and a withdrawal mechanism attached thereto (col. 9, line 54 to col. 10, line 24 and figure 4), wherein the core has a synergistic absorbent capacity of less than 6 grams (col. 19, line 66 to col. 20, line 19), and a backup feminine protection product (12) wherein the tampon and the backup feminine protection product are packaged in a common package as set forth in col. 6, lines 47 – 55.

Regarding claim 2, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is a pantiliner as set forth in col. 6, lines 24 – 26.

As to claim 3, Moder discloses a feminine hygiene kit wherein the pantiliner has a caliper of less than or equal to about 3 mm as set forth in col. 7, lines 40 – 41.

With reference to claim 4, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is a sanitary napkin as set forth in col. 8,

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lines 44 – 48.

With respect to claim 5, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is an absorbent interlabial device as set forth in col. 3, lines 5 – 9.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 8 – 9 and 14 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moder, as applied to claims 1 – 5, and further in view of Stravitz (US 6,164,442).

The difference between Stravitz and claim 1 is the provision that the tampon comprise an absorbent core and a withdrawal mechanism, wherein the absorbent core has a synergistic absorbent capacity of less than 6 grams.

Stravitz teaches a kit comprising a tampon, a backup feminine protection product and a mirror packaged together in a common package as set forth in col. 6, lines 15 – 60.

It would have been obvious to one of ordinary skill in the art to provide the tampon of Stravitz with a withdrawal mechanism, if not already included, because it is

well known in the art to provide tampons with withdrawal mechanisms in order to facilitate removal of a used tampon.

The applicant claims that a tampon wherein the core has a synergistic absorbent capacity of less than 6 grams. This "capacity" reflects the ability of tampon to absorb less than 6 grams. Stravitz discloses a tampon. Although the tampon of Stravitz is not detailed, one can conclude that the tampon falls into one of the four categories mandated by FDA. Therefore, the tampon, at the minimum, must be able to absorb up to 6 grams ("junior" absorbency) and at the maximum, must be able to absorb up to 15 grams ("ultra" absorbency). Nonetheless, if the tampon, for example, is only insulted with 3 grams of fluid, then 3 grams of fluid is all that the tampon will absorb.

The claim language only reflects a tampon that is able to absorb less than 6 grams of fluid; thereby the tampon of Stravitz is not excluded by the claim language.

As to claim 6, Stravitz discloses a kit further comprising a mirror as set forth in col. 6, lines 15 – 16.

With respect to claims 8 and 19 – 20, it is well known in the art to package a tampon with a tampon insertion guide and/or instruction booklet which would thereby assist the user in creating a tampon usage system, in order to provide the user with personal assistance and necessary guidelines associated with using the product.

It would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to include such guides and/or instructions to provide assistance to users that are not familiar with tampon usage.

With reference to claim 9, see col. 6, lines 58 – 60.

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Regarding claims 14 – 15, see col. 14, lines 54 – 63. It would have been obvious to one of ordinary skill in the art to provide candy in the kit of Stravitz because Stravitz discloses that the kit can be used a lunch box or a picnic carrier.

As to claim 16, see col. 5, lines 51 – 55.

With reference to claims 17 and 18, it would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to employ the claimed limitations, based on the targeted population, because the purpose of the kit in general is to provide convenience to the user. Likewise, Stravitz discloses that a space is provided in the kit to accommodate additional items or articles as desired as set forth in col. 6, lines 13 – 15.

Claims 10 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stravitz and further in view of Morrow (US 5,988,386).

The difference between Stravitz and claim 10 is the provision that the feminine hygiene kit further comprise an insertion glove.

Morrow teaches a feminine hygiene kit further comprises a glove as set forth in col. 11, lines 41 – 43.

It would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to include a glove because the glove allows the woman's hand to remain sanitary while inserting/removing the tampon as taught by Morrow in

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col. 11, lines 50 – 52. While the glove of Morrow is explicitly disclosed as a removal glove, the glove remains fully capable of being used as an insertion glove and serves the same purpose as the insertion glove.

Regarding claims 11 – 13, Morrow teaches the claimed limitations as set forth in col. 11, lines 33 – 58.

Response to Arguments

Applicant's arguments filed February 4, 2002 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Moder reference does not provide a tampon with the claimed absorbent capacity, the examiner disagrees.

The applicant claims that a tampon wherein the core has a synergistic absorbent capacity of less than 6 grams. This "capacity" reflects the ability of tampon to absorb less than 6 grams. Moder discloses a tampon that may absorb up to 9 grams (i.e. a "regular" tampon). However, if the regular tampon is insulted with 3 grams of fluid, then 3 grams of fluid is all that the regular tampon will absorb.

The applicant's arguments are directed to a tampon that does not absorb more than 6 grams of fluid, however the claims reflect a tampon that is able to absorb less than 6 grams of fluid, thereby the tampon of Moder is not excluded by the claim language.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell

Michele Kidwell
April 24, 2002

John G. Weiss

John G. Weiss
Supervisory Patent Examiner
Group 3700

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in ABANDONMENT of the application.